

PT 96-35
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

CHRISTIAN HERITAGE PROPERTIES)		
Applicant)		
)	Docket #	94-16-310
v.)		
)	Parcel Index #	04-23-400-047
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Michael P. Mosher, appeared on behalf of Christian Heritage Properties, the applicant in this case and Ms. Nina H. Tamburo, appeared on behalf of the Daughters of Charity of St. Vincent De Paul of Indiana, Inc., the intervenor in this case.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on March 25, 1996, to determine whether or not Building F., the convent, the land on which it stands and the five parking spaces for the convent occupants, located on Cook County Parcel No. 04-23-400-047 should be exempt from real estate tax for the 1994 assessment year.

Sr. Frances Ryan, Sister Servant of the Daughters of Charity of St. Vincent DePaul of Indiana, Inc., (hereinafter referred to as the "Daughters of Charity") was present and testified on behalf of the intervenor, the Daughters of Charity.

The issues in this matter include first whether the Daughters of Charity is a religious organization. The second issue is whether Christian Heritage Properties (hereinafter referred to as the "Applicant") or the Daughters of Charity, is the owner, for real estate tax purposes of Building F., the land on which it stands, and the five parking spaces, during the 1994 assessment year. The final issue is whether Building F., the land on which it stands and the five

parking places, were used as a parsonage or for exempt purposes during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the Daughters of Charity is a religious organization. It is also determined that the applicant is the owner for real estate tax purposes of Building F., the land on which it stands, and the five parking places, during the 1994 assessment year. Finally, it is determined that although the Daughters of Charity used Building F., the land on which it stands, and the five parking places, for parsonage and exempt purposes, since they did not own this real estate for tax purposes, Building F., the land on which it stands, and the five parking places did not qualify for exemption from real estate tax for 45 percent of the 1994 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that Building F., the land on which it stands, and the five parking places did not qualify for exemption for 45 percent of the 1994 assessment year, was established by the admission in evidence of Department's Exhibits 1 through 5B.

2. On January 10, 1995, the Cook County Board of Appeals forwarded an Application for Property Tax Exemption To Board of Appeals, filed by the applicant in this matter, concerning this parcel for the 1994 assessment year, to the Department. (Dept. Ex. No. 1)

3. The Board of Appeals Complaint form filed by the applicant in this matter indicated that the Applicant sought an exemption from real estate tax pursuant to the charitable and religious exemption provisions of the Illinois Compiled Statutes. (Dept. Ex. No. 1A)

4. On October 13, 1995, the Department notified the applicant that it was approving the exemption of this parcel and the buildings thereon, except for Building F., the land on which it stands, and the five parking spaces, for 45 percent of the 1994 assessment year. (Dept. Ex. No. 2)

5. One of the attorneys for the Daughters of Charity then intervened in this matter and requested a formal hearing. (Dept. Ex. No. 3)

6. The hearing held in this matter on March 25, 1996, was held pursuant to that request for hearing.

7. On July 22, 1994, the Daughters of Charity, as seller, entered into an Installment Agreement For Warranty Deed with the Association of Christian Heritage Academy (hereinafter referred to as the "Academy") as purchaser, for the sale and purchase of this parcel. (Dept. Ex. No. 1E)

8. This agreement provided that the total purchase price to be paid by the Academy for this parcel is \$6,250,000.00. The agreement also provided that the amount to be paid by the Academy to the Daughters of Charity when the Academy received possession of this parcel was \$750,000.00. (Dept. Ex. 1E)

9. The Academy is required by the agreement to pay the real estate taxes on this parcel before they are due, during the term of the agreement. (Dept. Ex. No. 1E)

10. The provision concerning repairs and operating expenses contained in the agreement includes a provision requiring the Academy to provide rent free housing in building F. to the nuns of the Daughters of Charity plus 5 parking spaces, for the term of the agreement. (Dept. Ex. No. 1E)

11. On August 12, 1994, the Academy assigned this agreement to Christian Heritage Properties, the applicant herein. (Dept. Ex. No. 1F)

12. On August 29, 1994, the applicant made the initial payment on the agreement of \$750,000.00 and took possession of this parcel and the buildings thereon, pursuant to the agreement. (Dept. Ex. No. 1G)

13. The Academy operated a Christian School in part of the buildings on this parcel during the period August 29, 1994, through December 31, 1994. Part of the buildings on this parcel were also used by a church, a montessori school, a church day care and a senior citizens day care during that period of time (Dept. Ex. Nos. 1G & 1K)

14. The applicant was incorporated on June 29, 1994, pursuant to the General Not For Profit Corporation Act of Illinois for purposes which included the following:

Christian Heritage Properties...is organized in accordance with the provisions of Section 501 (c)(2) of the Internal Revenue Code of 1986, exclusively for charitable, educational and religious purposes directly in support of the Association of Christian Heritage Academy. A primary function of the Corporation shall be to hold title to property, collect income therefrom and turn over the entire amount thereof, less expenses, to the Association of Christian Heritage Academy so long as such organization continues to qualify under Section 501 (c)(3) of the Internal Revenue Code of 1986....

15. The Daughters of Charity is incorporated pursuant to the Indiana Not-For-Profit Corporation Act. The purpose clause of said Articles of Incorporation, as amended, includes the following:

To serve as an integral part of the Roman Catholic Church and to further the mission of the Daughters of Charity of St. Vincent de Paul of healing and service to the sick and poor, and to promote, support and engage in any of the religious, charitable, scientific and educational ministries which are now, or may hereafter be, established by the Daughters of Charity of St. Vincent de Paul;.... (Dept. Ex. No. 1AC)

16. The Daughters of Charity are required to live in community. (Tr. p. 16)

17. Prior to 1994, the Daughters of Charity operated a parochial girls high school on the parcel here in issue known as Marillac High School. (Tr. p. 19)

18. During August of 1983, the Daughters of Charity purchased four portable housing units from Sears which were assembled on permanent foundations on this parcel and which are now known as Building F., or the convent. (Tr. pp. 19 & 20)

19. When the enrollment of Marillac High School dropped to about 380 students, the Daughters of Charity decided to close the school and to collaborate with the Jesuits of Loyola Academy and transfer the remaining Marillac students to Loyola Academy. (Tr. p. 21)

20. As of August 29, 1994, there were 5 sisters of the Daughters of Charity living in building F. (Tr. p. 22)

21. Three of those sisters taught at Loyala Academy. Sister James Jeffers taught English, Sister Anne Schedler, was a guidance counselor and Sister Sheila Kearney was the business manager. (Tr. p. 22)

22. Sister Frances Ryan was an associate professor at DePaul University and Sister Mary Kay Schreier was the pastoral associate at St. Peter Claver Mission in Robbins, Illinois. (Tr. p. 23)

23. It is a condition of their employment that each of those 5 nuns live in Building F. (Tr. pp. 24 & 25)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Illinois Supreme Court, long ago, determined that the question of whether property is exempt from taxation, depends upon the constitutional and statutory provisions in force, at the time for which the exemption is claimed.

The People v. Salvation Army, 305 Ill. 545 (1922)

35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

Property otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held (i) by an entity that is organized solely to hold that title and qualifies under paragraph (2) of Section 501 (c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property....

35 ILCS 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations

and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 **ILCS** 200/15-125 provides in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any...religious...institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

On July 22, 1994, the Daughters of Charity, as seller, and the Academy as buyer entered into an Installment Agreement For Warranty Deed concerning the purchase by the Academy of this parcel. On August 12, 1994, the Academy assigned its interest in the agreement to the applicant. On August 29, 1994,

the applicant made the initial payment on the agreement of \$750,000.00 and took possession of this parcel and the buildings thereon, pursuant to that agreement. The applicant is a 501 (c)(2) corporation. When the applicant filed the exemption complaint in this matter it did so under the religious exemption and the charitable exemption. The Academy, which is the organization which the applicant was created to benefit, immediately began to operate a Christian school in a portion of the buildings on this parcel. I take administrative notice that the Department in its initial determination in this matter found that the applicant is a religious and charitable organization. The only provision in the Property Tax Code which provides an exemption for 501 (c)(2) corporations is located in the charitable exemption found in 35 **ILCS** 200/15-65 set forth above. That exemption provision requires that an organization both own the property and use it for charitable purposes. I conclude that the Daughters of Charity, based on the findings of fact, is a religious organization. The religious exemption found in the Property Tax Code at 35 **ILCS** 200/15-40 and set forth above, in the portion exempting parsonages and convents also requires that the religious organization own the property. The parking lot exemption provision found in the Property Tax Code at 35 **ILCS** 200/15-125 also requires ownership. Since the applicant is a religious and charitable organization and the Daughters of Charity is a religious organization using Building F., the land on which it stands, and the five parking places for parsonage or convent and parking lot purposes, the primary issue in this case is who owned the property here in issue during the period August 29, 1994, through December 31, 1994. The agreement in this case is essentially a contract for deed. In the case of Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978), the Court held that the ministry, the contract purchaser pursuant to a contract for deed, was the owner of the real estate in question for real estate tax exemption purposes. See also the case of Immanuel Evangelical Lutheran Church v. Department of Revenue, 267 Ill.App.3d 678 (4th Dist. 1994), leave to appeal denied, which reached the same result in a

case involving a church parsonage. I conclude that the applicant became the owner of this parcel by the terms of the agreement when on August 29, 1994, it made the initial payment on this parcel of \$750,000.00 and received possession of said parcel. Consequently, I conclude that the applicant was the owner of Building F., the land on which it stands, and the five parking spaces, during the period August 29, 1994, through December 31, 1994. I therefore conclude as a matter of law that the Daughters of Charity do not qualify for exemption for Building F., the land on which it stands and the five parking places, during the period August 29, 1994, through December 31, 1994.

The attorney for the Daughters of Charity in her brief cites the cases of Resurrection Lutheran Church v. Department of Revenue, 212 Ill.App.3d 964 (1st Dist. 1991) and Childrens Development Center, Inc. v. Olson, 54 Ill.2d 332 (1972). Those cases are distinguishable from the case here in issue, in that those cases concerned leases by one exempt entity to another exempt entity, while this case concerns a contract seller and a contract purchaser. The seller, the Daughters of Charity, pursuant to the contract simply retained the right under the contract to continue to occupy Building F., at no cost during the term of the agreement. 35 **ILCS** 200/15-40 and 35 **ILCS** 200/15-125 clearly require that parsonages or convents and parking lots be owned by the organization claiming the exemption, which is clearly not the case concerning Building F., the land on which it stands and the five parking spaces

The parties to this agreement would appear to have both been represented by legal counsel and there most certainly were methods available which would have reached the desired result. However, the parties, for their own reasons, elected to draft the documents as hereinbefore set forth and consequently are bound by the tax consequences of the use of those documents.

I therefore recommend that Building F., the land on which it stands, and the 5 parking places assigned to the convent residents, located on Cook County Parcel No. 04-23-400-047 be placed back on the tax rolls for 34 percent of the 1994 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
October 28, 1996